Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP)
Summary of Comments and Responses

The Maine Department of Health and Human Services (DHHS) held a public hearing on December 16, 2011 to obtain comments on a complete repeal and replace of MAAP regulations. This document summarizes all comments received during the public comment period ending December 26, 2011.

Comments Not Specific to Sections of the Proposed Rule:

1. A number of commenters stated that the proposed rule is an improvement over the version adopted on January 1, 2011. (1)(2)(3)(4)(5)One commenter stated that the proposed rule is the result of excellent work done by many people and would like to thank them all for their time and careful consideration. (1)

   One commenter stated that he appreciated the work of the MAAP Advisory Committee and also noted the Department's willingness to make substantive changes that make these rules better than what was proposed previously. (2)

   Another commenter stated her appreciation for the work by the Department and the MAAP Advisory Committee in making the rule less onerous for the commenter's members. (4)

   Another commenter stated that she appreciated the collaboration to date between the MAAP Advisory Committee and the Department to make substantive changes and improvements to the former rules. (5)

   Response – The Department thanks the commenters for their comments. The Department did not make any changes to the final rule as a result of these comments.

Comments Specific to Proposed Rule

§ .01 B. 6.

2. One commenter stated that a budget revision is a substantive change to the terms and conditions of an agreement and should be considered an amendment and used as an example under Section .01 B. 2. Agreement amendment. (6)

   Response – The Department disagrees. An agreement amendment as defined in Section .01 B. 2 is a legally binding change or modification of the existing agreement. The DHHS Division of Purchased Services Policy and Procedure Manual clearly identifies the conditions under which an amendment to an agreement must be made. A budget revision as defined in Section .01 B. 6 is an approved change or modification to the existing budget and does not constitute a change to the total budget amount. The DHHS Division of Purchased Services Policy and Procedure manual clearly identifies the

conditions under which a budget revision will be approved. Moreover, the DHHS Division of Purchased Services Policy and Procedure Manual defines an amendment to be a "substantive change to the original agreement, which change(s) is agreed to by all parties to the agreement. An amendment will be in written form and signed by all parties to the agreement." The DHHS Division of Purchased Services Policy and Procedure Manual defines Revision as a "nonsubstantive change to the original agreement usually suggested by one party and agreed to by other parties. It requires prior written approval agreed to by all parties." The Department did not make any changes to the final rule as a result of this comment.

§ .01 B. 33.

3. One commenter stated that it was his understanding that this new definition of program income has been added in order to clarify the cost sharing/settlement where multiple funding sources share in the expense of a funded service. The commenter stated that this clarification needs to be part of the definition. The commenter proposes the following language:

    a. "Program income, for the purpose of the cost sharing agreement/settlement where multiple funding sources share in the expense of a funded service, means gross income earned by …..". (2)

    Response – The definition of program income contained in the MAAP rule, with the exception of the last sentence, is replicated from the definition of program income found in Federal Circular OMB A-110, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.* The last sentence of the definition of program income, ("MaineCare revenue, whether fee for service, unit based or cost settled, is program income.") was added by the Department to clarify the Department's position that MaineCare income meets the definition of program income contained in OMB Circular A-110, Subpart A, § ___.2(x) Program income. The Department did not make any changes to the final rule as a result of this comment.

    § .01 B. 35.

4. One commenter stated that the definition of restricted income should be changed to the definition agreed to by the previous MAAP Advisory Committee and included in the rule adopted on January 1, 2011 and subsequently repealed. The commenter noted that the previous definition stated: "Restricted revenue is income from organizations or individuals that require the funds be used for a specific purpose within a program." The commenter stated that all restricted revenue is eliminated dollar for dollar with expense prior to cost sharing and limits the ability of the community agencies to retain surpluses. The commenter said that community agencies keep all deficits, and the amount of surplus agencies are allowed to keep is so small that it hampers the agency's ability to maintain the agency as a "going concern". The commenter stated that the effect of the definition is that contributions to a program from a source like the United Way are used to supplant

State agreement funds. The commenter stated that he does not believe this is the donor's intent. (2)

Another commenter stated that the definition of restricted and unrestricted revenue and the issue of inclusion or exclusion of charitable donations with respect to cost sharing are issues for the agencies that the commenter represents. The commenter stated that charitable contributions are critical to an agency's ability to maintain core services and to meet the needs of vulnerable clients. The commenter stated that the agencies she represents do not accept that the Department's definitions and interpretation are within the mainstream of practice. The commenter stated that she does not think that the DHHS proposed interpretation complies with generally accepted accounting principles or guidance provided by any authoritative accounting body regarding the definition of unrestricted contributions and their eligibility to cost share. The commenter supports the language put forward by Paul Morgan, CFO of Penquis (see commenter (2) above). The commenter said that the definition of restricted revenue should be changed to read: "restricted revenue is income from organizations or individuals that require the funds be used for a specific purpose within a program." The commenter reiterated that eliminating restricted revenue from cost sharing limits the ability of community agencies to retain surpluses. She said that community agencies keep all deficits, but the amount of surplus retained is so small that it hampers a community agency's ability to maintain an agency as a "going concern". The commenter stated that the effect of the definition is that contributions from a source like the United Way are used to supplant state agreements funds, presumably not the donor's intent. The commenter recommended that the definition that was agreed to by the previous MAAP Advisory Committee and in the prior draft rules be used. (3)

One commenter stated that cost sharing contract definitions are unduly restrictive, subverting donor intent. The commenter stated that the definition of restricted income in the proposed rule supports recent interpretations of MAAP regulations in which other source donations need to be fully spent before State dollars are spent for purchased services. The commenter said that this interpretation does not appear to be a common interpretation across other states and represents a radical approach to cost sharing. The commenter stated that the agencies the commenter represents are concerned that philanthropic dollars raised in good faith to augment services purchased by the State, are instead being used by the State to cover the costs of the purchased services, contrary to donor intent to better serve the targeted populations. The commenter said that, as donors begin to understand this practice, it will have a chilling effect on charitable giving for the services which the commenter said he does not believe is the intent of the legislature nor in the best interest of the nonprofit service providers or the people they serve. The commenter urged the Department to revisit this interpretation and work with the regulated community to come up with definitions that are more in line with practices in other states and beneficial to all parties. (4)

Response: The Department believes that restricted donations, most of which are recurring, that are restricted for a particular agency program should be spent in the

program year for which they are intended. Furthermore, Financial Accounting Standards Board Accounting Standards Codification 958-205-45-11 states:

> If an expense is incurred for a purpose for which both unrestricted and temporarily restricted net assets are available, a donor-imposed restriction is fulfilled to the extent of the expense incurred, unless the expense is for a purpose that is directly attributable to another specific external source of revenue.

The Department has interpreted this statement to mean that if an agency has incurred expenses which are eligible to be paid from either unrestricted or restricted funds, the agency must charge the restricted funds first. Therefore, the elimination of restricted revenue dollar for dollar against restricted expense prior to cost sharing is in keeping with generally accepted accounting principles. The Department did not make any changes to the final rule as a result of this comment.

§ .01 B. 45.

5. One commenter stated that the definition for unrestricted revenue is problematic and recommends that the language of the prior Advisory Committee be used. That language defined unrestricted revenue as follows: "Unrestricted revenue from funding sources to a community agency that is not restricted for a specific purpose within a program by the donor. Revenue that has been designated to a specific program, but not a specific purpose is considered unrestricted revenue." *(2)*

   Another commenter stated that the definition for unrestricted revenue is problematic and recommends that the language of the prior Advisory Committee be used. That language defined unrestricted revenue as follows: "Unrestricted revenue from funding sources to a community agency that is not restricted for a specific purpose within a program by the donor. Revenue that has been designated to a specific program, but not a specific purpose is considered unrestricted revenue." The commenter stated that she does not believe the purpose of charitable gifts is to supplant monies authorized by the legislature to provide service to victims in Maine. She stated that domestic violence organizations receive donations throughout the year that are intended to expand the range of services either in kind or in quantity. The commenter stated that own contributions, United Way award, and other grant awards, for example, need to be managed in a way that allows them to be leveraged for increased capacity within organizations to meet increased client needs and decreased state/federal revenues. She stated that donors need to be assured that the money they provide will not end up supplanting the State's burden and returned to the State. The commenter stated that she believes that cost sharing principles allow for that burden of financial responsibility to be shared and that proper locations for charitable gifts are within applicable cost sharing parameters. *(3)*

   Response: For reasons explained in the response to comments listed in #5 concerning restricted revenue, the Department has made no changes to the final rule as a result of this comment.

§ .02 B. 3.(a), § .02 C. 1.(b) and § .03 A. 2.(a)

6. One commenter stated that the three requirements noted above require additional audit work which will increase costs for the community agencies. The commenter suggested that, in this time of scarce resources, perhaps something other than an audited SEDA might suffice. (1)

   Response – Title 5, Part 4, Chapter 148-C, Maine Uniform Accounting and Auditing Practices for Community Agencies requires community agencies expending $500,000 or more of agreement funding from the Department must have an entity wide financial and compliance audit of the agency's financial statements and agreement supplemental schedules prepared by a qualified independent public accountant. The Department did not make any changes to the final rule as a result of this comment.

   § .02 C. 1.

7. One commenter stated that this section was changed to add that the SEDA would match to interim quarterly reports submitted to the Department. The commenter stated that this is an improvement over previous language that the SEDA needed to match to the Agreement Close-out report. The commenter said that the problem is that an agency fiscal year may not match up to the interim quarterly report period. The commenter recommends the following wording to resolve this issue: "Purpose: The SEDA provides the Department with information identifying agreement expenditures based on the Agreement Close-Out Report(s) (ACR) and interim quarterly reports submitted to the Department during the fiscal year, when those reports match to the fiscal year end of the agency." (2)

   Response – The Department agrees with the commenter that when an agency's fiscal year does not match up to an interim quarterly report, the rule should provide additional guidance. § .02 C. 1. has been changed to read as follows:

   > Purpose: The SEDA provides the Department with information identifying agreement expenditures based on the Agreement Close-out Report(s) (ACR) and interim quarterly reports submitted to the Department during the current fiscal year. When an agency has a fiscal year end that does not match up to the interim quarterly report period, the agency will obtain the necessary interim information from its accounting records.

   § .02 C. 1. And 3.

8. One commenter stated that the MAAP rules requires the SEDA to match the Agreement Close-out Report (ACR) but that there is nothing in the rule that specifies the timeframe an agency has to submit the ACR. The commenter stated that current practice by some Agreement Administrators is that the ACR due in 30 to 45 days at the end of an agreement. The commenter stated that this time frame is inadequate to capture all accounting data necessary to submit an accurate ACR. The commenter recommended the

following language be added to the rule: "Agreement Close-out Reports are due to the Department no later than ninety (90) days from the end of the agreement. Agreement Administrators may require the Agreement Close-out reports earlier, but no earlier than sixty (60) days after the agreement end date." *(2)*

Response – The due dates of interim and final reports to the Department are the purview of the Division of Purchased Services and are beyond the scope of these rules. The Department did not make any changes as a result of this comment.

§ .02 F. 6.

9. One commenter stated that he likes the ability to submit the MAAP report electronically to the Division of Audit. The commenter said he would like to see language in the rule directing agreement administrators and others who need a copy of the agency MAAP submission to obtain the copy through the Division of Audit rather than requesting it from the community agency. The commenter suggested language as follows: "Department personnel who need or want a copy of the community agency submitted reports will obtain them through the Division of Audit." (2)

   Response – The Department agrees that a community agency should not have to submit the required MAAP reports to the Department multiple times. The language of § .02 F. 6 has been changed as follows:

   > Electronic submission is recommended and should be sent to dhhs.audit@mainegov for submission to the Maine Department of Health and Human Services. Electronic submissions to the Maine Department of Transportation should be sent to OfficeofAudit.MaineDOT@maine.gov. State personnel who require a copy of the MAAP report for a community agency should contact the Division of Audit for the Maine Department of Health and Human Services or the Office of Audit for the Maine Department of Transportation.

   § .03 C. 1.

10. Two commenters encouraged the Department to adopt the federal 25% of total expenditures testing for low-risk auditees. The commenters stated that whenever the state varies from the federal requirements, audit and compliance costs increase. The commenters said that they do not believe that the value of the additional testing offsets the increase in costs. The commenters suggested the Department add a new item 2 that addresses testing of 25% for a low-risk auditee. (1) (2)

    Another commenter stated that her agency supports using the federal 25% of total expenditures for low-risk auditees and would encourage the addition of that language to the rule. (5)

Response - The Department agrees and made the following changes: Section .03, C.1.(b) has been changed to allow an Independent Public Accountant to classify an agency as a low-risk auditee and perform compliance testing on agreements that make up at least 25% of total expenditures claimed. Section .03, C.2 was added to define the criteria to be classified as a low-risk auditee.

§ .03 C. 2.

11. One commenter recommended that the Department adopt the American Institute of Public Accountants (AICPA) definition of materiality, which is not a specific number but is based on facts and circumstances. (1)

    Response – Paragraph .13 of the Statement of Auditing Standards (SAS) 117, *Compliance Audits*, promulgated by the AICPA, states that the auditor should establish and apply materiality levels for compliance based on the governmental audit requirement. In paragraph .A8 of the Application Guidance and Explanatory Material, it states that "because the governmental audit requirement usually is established by the grantors and the auditor's report on compliance is primarily for their use, the auditor's determination of materiality usually is influenced by the needs of the grantors." For many years, the Department has had budget compliance requirements for all cost settled agreements. Materiality for budget compliance has been quantified to meet the needs of the Department. The Department did not make any changes as a result of this comment.

    § .03 C. 2.

12. One commenter said that the Department's new position on the treatment of subcontracts as restricted funding with no variance between budgeted and actual allowed is problematic. The commenter said that a subcontract amount is not necessarily known at the time the agreement is being negotiated with the Department. The commenter stated that, because the level of work may change and the agency may need to move funds between other categories, there should be some flexibility to do this without requiring a budget revision. Additionally, the commenter states that Department Agreement Administrators do not want to review and approve budget revisions many times during the course of the agreement. The commenter asked, if the service being purchased is supplied and the agency has to shift its budgeted category amount around to do that, why should the agency be penalized for not accomplishing an administrative task of a budget revision? The commenter recommended that the subcontract category be included in the paragraph describing the variance allowed for personnel and the all other category. (2)

    Another commenter stated that her agency does not support the Department's new position on the treatment of subcontracts as restricted funding and with no variance between budgeted and actual allowed. The commenter said she does support the Department's existing practice of allowing a budget to actual variance similar to personnel and the "all other" category. The commenter stated that, if there are certain types of subcontracts that can be identified and defined within the rules to demonstrate

circumstances where there would not be any variance between budget to actual, while other types could have a variance, that would be an acceptable alternative. (5)

Response – The Department agrees and has the made the following changes: In Section .03 C. 3 (b) has been changed to state:,

> Total expenses per subcontract vary from the budgeted amount by at least 10% or $1,000, whichever is greater.

§ .03 C. 5.(e)

13. One commenter stated that this section requires community agencies to monitor agreement advances and return interest from advances to the Department. The commenter stated that this section should include an offset for the agreements that the Department is in arrears paying, with any net interest due to the Department. Additionally, the commenter stated that federal rules allow community agencies to retain up to $250 of interest income annually. The commenter recommended that this section read as follows: "The community agency has a system in place to monitor agreement advances and amounts owed to them from the Department and ensure that interest from the net of these amounts in excess of $250 annually is reimbursed to the Department." (2)

    Response – It is the Department's intention that community agencies follow applicable federal circulars with regard to cash management compliance requirements. This particular section relates to the minimum workpaper requirements for Independent Public Accountants in documenting the testing of a community agency's administrative controls and compliance requirements. In the interest of clarity, the Department has modified the wording as follows:

    > The community agency has a system in place to monitor agreement advances and ensure interest from advances is reimbursed to the Department in accordance with applicable federal circulars.

    § .03 C. 5.(f)

14. One commenter stated that the Department requires the community agency to liquidate balances owed to the Department within 90 days of the end of the agreement. The commenter stated that there currently is nothing in MAAP that says when the Department must liquidate balances due to community agencies. The commenter recommended that the following be added as a separate letter to this section: "The Department will liquidate all balances due the community agency within 90 days of receiving the Agreement Close-out Report." (1)

    Response – Payments made by the Department to a community agency are beyond the scope of these rules. In addition, this particular section of the rule relates to minimum workpaper requirements for Independent Public Accountants that document testing of the

community agency's administrative controls and compliance requirements. The Department did not make any changes as a result of this comment.

15. One commenter stated that the A-133 and MAAP IPA reports are due no later than 9 months after the fiscal year end. The commenter stated that, until A-133 and MAAP reports are completed, there is no established notice of debt. The commenter stated that until various cost reports are submitted, and organizations are able to complete MAAP requirements, therefore no determination of debt (obligation) has taken place. (6)

    Response: The Department disagrees with this comment. The Notice of Debt required in accordance with 22 M.S.R.S §1714-A are rules that are specific to MaineCare payments and are not applicable to social service agreements. Social Service agreements are subject to applicable Federal circulars and MAAP as detailed in Section .04 of the MAAP rule. Nonprofit and educational entities must follow OMB Circular A-110, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.* In addition, non- profit agencies must also follow OMB Circular A-122, *Cost Principles for Non-Profit Organizations* and educational entities must follow OMB A-21, *Cost Principles for Educational Institutions.* Local governments and For-Profit entities must follow both OMB Circular OMB A-102, *Grants and Cooperative Agreements with State and Local Agencies* and OMB A-87, *Cost Principles for State and Local Governments.* For non-profit and educational institutions, OMB Circular A-110, §___.71(b), states that "a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in agency implementing instructions." The Department did not make any changes as result of this comment.

    § .04, C. 1.(d), § .04. C. 1.(e), § .05, A. 2. and § .05. B. 9.

16. Two commenters stated that all of the sections listed (above) give authority to Department employees, but, as written, hold the community agencies, not the Department employees, responsible for any errors or omissions committed by the Department employees. The commenters stated that under these proposed rules, the only truly responsible party to any Department agreement is the community agency, which the commenters said is being held to the unrealistic requirement of having to negotiate and manage both sides of the agreement. The commenters stated that this is inherently unfair. The commenters said that by giving authority without accountability or consequence, this provides no incentive for Department employees to do their work well. The commenters added that this is a major flaw in the MAAP rule that could be resolved by stating in the rule that where there is a contradiction between MAAP and the Department agreement, the terms of the agreement will prevail. (1) (2)

    Another commenter stated that where there are discrepancies between a contract and MAAP regulations, the contract language should prevail. The commenter stated that the current draft rules do not adequately fix the situations where a service provider fulfills a contract only to find out after the fact that the contract language contradicts MAAP

regulations. The commenter stated that in these situations, the Department has ruled that even though the services have been provided, the costs are not allowable under MAAP and the money has been recalled. The commenter stated that this practice unfairly places the burden on the regulated community and provides no incentive for those writing the contracts to ensure compliance with MAAP. The commenter encouraged the Department to add language to the rules that specifically states that when there are discrepancies between a contract and the MAAP regulations, the contract language will be honored. (4)

Response – The Department cannot contract to violate its own rules. Both the regulated community and the Department are on notice of and obligated as a matter of law to follow those rules. No change was made to this rule as a result of these comments.

§ .04 C. 1. (d) and (e)

17. One commenter stated that MAAP defines an agreement as legally binding in Section .01, B. 1. The commenter stated that this is in conflict with State contract language. The commenter noted that the State's boiler-plate language in Rider B, 20 states that "agreements must have the approval of the State Controller and the State Purchases Review Committee before it is considered a valid enforceable agreement." The commenter stated that changes in the documents that do not follow such approval process are neither valid nor enforceable, and are therefore not auditable agreements. (6)

    Response – Minor changes to an agreement, such as a budget revision, do not require the approval of the State Controller and the State Purchases Review Committee. Other changes, such as the amount of the agreement or the dates of the agreement, are considered contract amendments and are subject to the approval of the State Controller and the State Purchases Review Committee. The Department did not make any changes to the final rule as a result of this comment.

    § .04 C. 3.

18. One commenter stated that the community agency must request a budget revision at least thirty (30) days prior to the agreement termination date. The commenter noted that if the revision approval is not granted in writing prior to the date of the required final report, all costs that exceed the budget thresholds shall be deemed questioned costs. The commenter also noted that any variance between the actual agency commitment and the budgeted amount shall be adjusted on the agreement settlement form prior to cost sharing. The commenter stated that this rule again places all the responsibility for failed state performance on the community agency. The commenter stated that the Department must be held accountable for its performance and that there must be consequences for the Department's failure to respond to a budget revision in a timely manner. The commenter stated that if the Department does not respond in a timely fashion, the revision request should be treated as approved. (1)

    Another commenter stated that this section requires community agencies to request a budget revision 30 days before the end of the agreement. The commenter stated that

there is no corresponding requirement for when an Agreement Administrator needs to respond with an approval or rejection of the budget revision. The commenter stated that the section simply says if the agency does not have an approval by the time the close-out report is due, the agency must settle on the budget in existence prior to the budget revision request and any variance outside the thresholds will be deemed questioned costs. The commenter recommended the following change to the last paragraph of the section:

> The community agency must request a budget revision at least thirty (30) days prior to the agreement termination date. The Agreement Administrator must respond in writing accepting or rejecting the budget revision or propose an alternative budget revision within fifteen (15) days of receiving the budget revision request. If the Agreement Administrator does not reply within this time period the budget revision is deemed accepted by the Agreement Administrator as long as the community agency can prove receipt of the budget revision request by the Department. If the revision approval is not granted, all costs that exceed the approved agreement budget thresholds shall be deemed questioned costs. In addition, any variance, if any, between the actual agency commitment and the budgeted amount shall be adjusted on the agreement settlement form prior to cost sharing. (2)

Another commenter said that her agency can support the requirement of requesting a budget revision 30 days before the end of the agreement, if there is a corresponding requirement for an Agreement Administrator to respond with an approval or rejection of the budget revision in a given timeframe or that no response deems acceptance. The commenter stated that her experience has been to not receive formal approval and so the commenter would expect a lot of frustration and uncertainty if this requirement were not equally balanced. (5)

Another commenter stated that MAAP defines an agreement as legally binding in Section .01, B. 1, which the commenter said is in conflict with State contract language. The commenter noted that the State's boiler-plate language in Rider B, 20 states that "agreements must have the approval of the State Controller and the State Purchases Review Committee before it is considered a valid enforceable agreement." The commenter stated that changes in the documents that do not follow such approval process are neither valid nor enforceable, and are therefore not auditable agreements. (6)

Response – In its Policy & Procedures Manual, the DHHS Division of Purchased Services gives Agreement Administrators fifteen (15) days to approve a budget revision. It is not the intention of these MAAP rules to reiterate policies and procedures for Department personnel, as those policies and procedures are beyond the scope of these rules. The Department did not make any changes to the final rule as a result of comments made by commenters (1), (2) and (5).
Minor changes to an agreement, such as a budget revision, do not require the approval of the State Controller and the State Purchases Review Committee. The Department did not make any changes to the final rule as a result of the comment made by commenter (6).

§ .04. C. 3.(d)

19. One commenter stated that this section should be amended to read: "The total agency commitment differs from the budgeted amount by at least 10% or $1,000, whichever is greater." (1)

    Response – An agency commitment is defined in the MAAP rule as the amount of funding the community agency has pledged to the program. Unlike expenses where the budgeted expenses do not always match actual expenses, the agency commitment is a fixed number, where the budgeted commitment should equal the actual funds committed. Therefore, the Department does not allow for a variance in what should be a fixed amount. Should the agency need to change its commitment for good cause during the year, the agency can request a budget revision. The Department did not make any changes to the final rule as a result of this comment.

    § .04 C. 4.

20. One commenter stated the second sentence of this section should be changed to: "The Department enters into agreements where the Department participates in programs with multiple funding sources. Below are the Department cost sharing principles to be followed in the budget and settlement process for the funds committed to programs with multiple funding sources." (1)

    Response – The Department has opted to describe the settlement process for all agreements, whether the agreement is funded by Department funds or multiple funds. If the agreement involves only Department funds, many of the steps described in the section would not be applicable. The Department has changed the title of this section to "Cost Sharing Settlements" from the original "Cost Sharing Settlements (Multiple Funding Sources)."

    § .04 C. 4.(a)

21. One commenter stated that the last sentence in this section exemplifies the mischaracterization of the settlement process. The commenter stated that the settlement process is not a "cost sharing" process. The commenter said that the process developed in MAAP for settlement is a process of revenue sharing, and its purpose is to bring principles that allow the State to share in all possible funding sources versus paying for an equitable amount of costs. (6)

    Response – Section .01 B. 14. defines a cost shared settlement as an agreement where multiple funding sources share in the expense of a funded service. Whether or not Department funding pays for an equitable amount of costs is beyond the scope of these rules. The Department did not make any changes to the final rule as a result of this comment.

§ .04, C. 4.(i)

22. One commenter stated that calling the final financial report the "agreement closeout report" is inaccurate. The commenter stated that the Agreement Closeout Reports are due within 90 days after the agency's fiscal year end (and are typically unaudited by the IPA), whereas the MAAP reports are due within 9 months and represent the true "final financial report". (6)

    Response – The Department disagrees. Under Section .02, C. the community agency will prepare the Schedule of Expenditures of Department Agreements (SEDA) based on its final closeout report(s) and any interim reports for agreements that have not closed. The IPA will opine on the SEDA as it was prepared by the agency. The nine-month time frame is to give an agency time to have its audit completed. The final closeout report, which is due no later than 90 days after the agreement termination date, is the report that the Department will settle. Any reports submitted after that time will not be accepted, as the Department has unencumbered any remaining funds in the agreement. The Department did not make any changes as a result of this comment.

    § .04 C. 6. and §.05 B.

23. One commenter stated that this section references the "examination process" but fails to establish a clear process for both parties. The commenter stated that it seems reasonable to establish time frames for State responsibilities similar to those established for community agencies. (6)

    Another commenter stated that MAAP sets forth the time frame within which community agencies must file their reports to the Department. The commenter stated that this section indicates the time frames within which community agencies must respond to a Department examination of their submitted reports. The commenter said that this section is silent as to the time frame within which the Department must perform an examination of the community agency's submitted reports. The commenter stated that this has been an area of great frustration in the past where it could be several years after the audit report has been submitted before the Department issues an examination report. The commenter stated that without timely feedback, the community agency does not receive timely feedback of any problems encountered with the settlement. The commenter said that a second problem with untimely examinations is that the agency has only sixty (60) days to respond to an examination. The commenter stated that when the examination is for an older year, the agency needs to go to the historical filing sites and pull out the agreement files to review them to ensure that agency is in agreement with the Department, and if not, research and prepare a response, all the while continuing current operations. The commenter said that while the Division of Audit has made a concentrated effort to get caught up on its examinations, there needs to be something in the MAAP rules so history does not repeat itself. The commenter recommended the following language be added to Section .04, C. 6.(c):

The Division of Audit shall prepare an examination report of community agencies selected for Department examination. The results will be communicated to the community agency and the Department within nine months of the community agency submission of their statements to the Division of Audit. Failure to issue an examination report to the community agency within this timeframe constitutes acceptance by the Department of the report as filed. *(2)*

Response – The Division of Audit has made a concentrated effort to become current with its examinations of community agencies. However, the Division of Audit is not guaranteed that sufficient resources will be provided in the future to allow the Division to continue in its efforts to bring all examinations current. The Department made no changes to the final rule as a result of this comment.

§ .04 D. 1.

24. One commenter stated that under Step b, there is a 1. under DHHS appeals, but a step b under DOT step b appeals. To be consistent, the commenter recommends a 2. next to the DOT.

    Response – The Department agrees and has made the suggested change.

    § .05 A. 2.

25. One commenter stated that the word "negotiate" should be changed to "establish," as the process does not allow for negotiation to occur between the parties. (6)

    Response – The Department disagrees. According to the Merriam-Webster Dictionary, the definition of negotiate is: "To confer with another so as to arrive at the settlement of some matter". It is the Department's view that all agreements are negotiated. For example, the Department has approval authority over an agency's budget, but the Department does not set the budget for the agency. The Department did not make any changes to the final rule as a result of this comment.

Commenters:

1. Charles Newton, Penquis
2. Paul L. Morgan, CMA, Penquis
3. Julia Colpitts, Maine Coalition to End Domestic Violence
4. Brenda Peluso, Maine Association of Nonprofits
5. Debra Parry, Seniors Plus
6. Dale Hamilton, Community Health and Counseling Services